

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

WP(C).No. 6870 of 2015 (G)

PETITIONER :

**M/S.T.V.SUNDRAM IYENGAR AND SONS LTD.,
NATTAKOM, KOTTAYAM, REP. BY MR.G.SRINIVASA RAGHAVAN,
GLOBAL PRESIDENT- DISTRIBUTION.**

**BY ADVS.SRI.N.RAGHURAJ
SMT.K.AMMINIKUTTY**

RESPONDENTS :

- 1. THE KOTTAYAM MUNICIPALITY,
MUNICIPAL BUILDINGS, KOTTAYAM-1
REP. BY ITS SECRETARY.**
- 2. THE SECRETARY,
THE KOTTAYAM MUNICIPALITY,
MUNICIPAL BUILDINGS, KOTTAYAM-1.**
- 3. THE EXECUTIVE ENGINEER,
LOCAL SELF GOVERNMENT DEPARTMENT,
KOTTAYAM MUNICIPALITY, MUNICIPAL BUILDINGS,
KOTTAYAM-1.**
- 4. THE DISTRICT TOWN PLANNER,
DISTRICT TOWN PLANNING OFFICE, KOTTAYAM.**
- 5. THE CHIEF TOWN PLANNER,
THIRUVANANTHAPURAM.**

**R1 & R2 BY ADV. SRI.PHILIP J.VETTICKATTU
R3 TO R5 BY GOVERNMENT PLEADER SRI. T.R. RAJESH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 10-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT P1 : TRUE PHOTOCOPY OF THE SALE DEED NO.1433/2005
DATED 30-03-2005 OF SRO, KOTTAYAM.
- EXT P2 : TRUE PHOTOCOPY OF THE LOCATION SKETCH OF THE PROPERTY.
- EXT P3 : A TRUE PHOTOCOPY OF THE RELEVANT EXTRACT OF THE DATA
BANK IN RESPECT OF THE PADDY AND WET LANDS IN NATTAKAM VILLAGE.
- EXT P4 : A TRUE PHOTOCOPY OF THE APPLICATION DATED 28-11-2013.
- EXT P5 : A TRUE PHOTOCOPY OF THE ORDER BEARING NO.NBA-233/2013-14
DATED 07-12-2013.
- EXT P6 : A TRUE PHOTOCOPY OF THE JUDGMENT DATED 24-07-2014 IN
WPC.NO.14929/2014 OF THIS HON'BLE COURT.
- EXT P7 : A TRUE PHOTOCOPY OF THE ORDER BEARING NO.NBA-233/13-14
DATED 02-02-2015.
- EXT P8 : A TRUE PHOTOCOPY OF THE LETTER BEARING NO.C/1845/14 L.DIS
DATED 26-12-2014.
- EXT P9 : A TRUE PHOTOCOPY OF THE JUDGMENT DATED 19-12-2014 IN
WPC.NO.32267/2014(M).

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.V.RAMAKRISHNA PILLAI, J

WPC No.6870 of 2015

Dated this the 10th day of June, 2015

JUDGMENT

The petitioner has approached this Court against the denial of building permit to construct an automobile workshop in the property purchased by them as per Ext.P1 sale deed.

2. The petitioner submitted Ext.P4 application for building permit before the respondents which was rejected by the third respondent stating that the property is described as wet land in the revenue records. Ext.P5 order was set aside by this Court as per Ext.P6 judgment and the second respondent was directed to consider Ext.P4 application afresh. Accordingly, Ext.P4 application was resubmitted along with a copy of Ext.P6 judgment. After a lapse of about 8 months, the third respondent issued Ext.P7 order rejecting Ext.P4 application again on the ground that the 4th respondent to whom the said application was forwarded for layout approval had declined such approval vide Ext.P8 letter for the reason

that the proposed construction violates the zonal regulations of Detailed Town Planning Scheme. According to the 4th respondent the property in respect of which Ext.P4 application was submitted is included in a paddy field zone of a Town Planning Scheme. It is with this background, the petitioner has approached this Court.

2. I have heard the learned counsel for the petitioner and the learned standing counsel for the respondent Municipality.

3. It was pointed out by the learned counsel for the petitioner that in the draft Data Bank pertaining to the paddy and wet lands in Nattakam Village, Ext.P1 property is described as land converted 8 years back.

4. The decision of this Court in ***Mohammed Abdul Basheer C.P. v State of Kerala and another*** (2012(3) KLT 86) lays down the principle that the present position of the land has to be taken into consideration and on ascertaining these facts, permission can be granted for construction.

5. It can be seen from the documents that the

property is not a paddy land and it is having full of aged trees. It is settled position that the applicant can choose the best land suited for construction (***Sunil v Killimangalam-Panjai 5th Ward Nellulpadaka Samootham*** 2012(4) KLT 511). Only if there is cultivation presently then it will be considered as cultivating paddy land so as to attract the provisions of the Kerala Conservation of Paddy Land and Wetland Act and Rules.

6. In ***Jalaja Dileep v Revenue Divisional Officer*** (2012(3) KLT 333) this Court observed that the description in the title deed or in revenue records will not be crucial if the property is reclaimed already.

7. The learned counsel invited my attention also to a Division Bench decision of this Court in ***Padmini v. State of Kerala*** [1999 (3) KLT 465] wherein it was held that no building permit can be refused to any person because there is a proposal to acquire the land in future. Reliance was also placed to the decision of the Apex court in ***Raju S. Jethmalani v. State of Maharashtra*** [(2005) 11 SCC 222] wherein it was held that refusing to grant permits

relying on obsolete DTP schemes is a clear violation of the provisions of the Constitution.

Viewed in that profile, this Court is of the view that the petitioner is entitled to get the reliefs prayed for. Therefore, the writ petition is allowed. Ext.P4 is quashed and the respondent Municipality is directed to reconsider petitioner's application for building permit within a period of one month from the date of receipt of a copy of this judgment after making a local inspection of the petitioner's property. If the respondent is satisfied that the property is not fit for paddy cultivation in the present form, building permit shall be granted to the petitioner without raising any further objection.

**sd/- A.V.RAMAKRISHNA PILLAI
JUDGE**

css/

true copy

P.S.TO JUDGE

The words "Ext.P4" occurring in the decretal portion of the judgment dated 10.6.2015 in WPC No.6870/2015 are corrected as "Exhibit.P7" as per order dated 6.7.2015 in I.A.9072/2015 in WPC No.6870/2015.

Sd/- Registrar (Judicial)